

HOUSE BILL 1084

By Eldridge

AN ACT to amend Tennessee Code Annotated, Title 47,  
relative to consumer rights by enacting the  
Tennessee Consumer Civil Litigation Funding Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, is amended by adding the following new chapter thereto:

47-33-101. This chapter shall be known and may be cited as the “Tennessee Consumer Civil Litigation Funding Act.”

47-33-102. As used in this chapter, unless the context otherwise requires:

(1) “Charges” means the amount of money to be paid to the civil litigation funding provider by or on behalf of the consumer, in addition to the principal amount of all proceeds provided to a Tennessee consumer pursuant to this chapter;

(2) “Civil litigation funding provider” or “provider” means a person that enters into a nonrecourse civil litigation funding transaction with a Tennessee consumer;

(3) “Consumer” means a person residing or domiciled in Tennessee who elects to enter into a transaction under this chapter, whether it be in person, over the Internet, by facsimile, or by any other means, and who has a pending legal claim;

(4) “Legal claim” means a civil or statutory claim or action; and

(5) “Nonrecourse civil litigation funding” means a transaction in which a civil litigation funding provider purchases and a consumer assigns to the civil litigation funding provider the contingent right to receive an amount of the potential proceeds of a settlement, judgment, award, or verdict obtained in the consumer’s legal claim.

47-33-103.

(a) All nonrecourse civil litigation funding transactions shall meet the following requirements:

(1) The contract shall be completely filled in when presented to the consumer for signature;

(2) The contract shall contain a right of rescission, allowing the consumer to cancel the contract without penalty or further obligation if, within five (5) business days following the consumer's receipt of the funds, the consumer either:

(A) Returns to the civil litigation funding provider the full amount of the disbursed funds by delivering the civil litigation funding provider's uncashed check to the civil litigation funding provider's office in person; or

(B) Mails, by insured, certified, or registered United States mail, to the address specified in the contract, a notice of cancellation and includes in such mailing a return of the full amount of disbursed funds in the form of the civil litigation funding provider's uncashed check or a registered or certified check or money order; and

(3) The contract shall contain the initials of the consumer on each page.

(b) The contract shall contain a written acknowledgment by all attorneys representing the consumer in the civil action or claim that states all of the following:

(1) All the costs and fees have been disclosed;

(2) The attorney is being paid on a contingency basis pursuant to a written fee agreement;

(3) All proceeds of the legal claim will be disbursed via either the trust account of the attorney representing the consumer in the civil action or claim or a

settlement fund established to receive the proceeds of the legal claim from the defendant on behalf of the consumer;

(4) The attorney is following the written instructions of the consumer with regard to the nonrecourse civil litigation funding; and

(5) The attorney has not received a referral fee or other consideration from the civil litigation funding provider, nor will the attorney in the future.

(c) In the event that proceeds are paid into a settlement fund or trust, the civil litigation funding provider shall notify the administrator of the fund or trust of any outstanding lien arising from the contract for litigation funding.

47-33-104. A civil litigation funding provider shall not:

(1) Pay or offer to pay commissions referral fees or other forms of consideration to any attorney, law firm, medical provider, chiropractor, or physical therapist or any of their employees for referring a consumer to a civil litigation funding provider;

(2) Accept any commissions, referral fees, rebates, or other forms of consideration from an attorney, law firm, medical provider, chiropractor, or physical therapist or any of their employees;

(3) Advertise false misleading information regarding their products or services;  
or

(4) Refer a client or potential client to a specific attorney, law firm, medical provider, chiropractor, or physical therapist or any of their employees; provided, however, if a client needs legal representation, the provider may refer the client to a local or state bar association referral service;

(5) Fail to promptly supply copies of any and all complete agreements to counsel for the consumer;

(6) Attempt to effect waiver of any remedy by way of compensatory or punitive damages that the consumer might otherwise have; or

(7) Attempt to effect arbitration or otherwise effect waiver of a consumer's right to trial by jury in a court of competent jurisdiction.

47-33-105. All nonrecourse civil litigation funding contracts shall contain the disclosures specified in this section, which shall constitute material terms of the contract. Unless otherwise specified, the disclosures shall be typed in at least twelve (12) point bold type and be placed clearly and conspicuously within the contract, as follows:

(1) On the front page under appropriate headings, language specifying:

(A) The total amount of funds to be paid to the consumer;

(B) An itemization of one (1) time fees; and

(C) The total amount to be assigned by the consumer to the civil litigation funding provider, including all fees;

(2) Within the body of the contract, "Consumer's Right to Cancellation: You may cancel this contract without penalty or further obligation within five (5) business days from the date you receive funding from (insert name of the civil litigation funding provider).";

(3) Within the body of the contract, "The civil litigation funding provider agrees that it shall receive no right to and will not make any decisions with respect to the conduct of the underlying civil action or claim or any settlement or resolution thereof and that the right to make those decisions remains solely with you and your attorney in the civil action or claim.";

(4) Within the body of the contract, in all capital letters contained within a box which states:

**“IF THERE IS NO RECOVERY OF ANY MONEY FROM YOUR LEGAL CLAIM OR IF THERE IS NOT ENOUGH MONEY TO SATISFY THE PORTION ASSIGNED TO THE CIVIL LITIGATION FUNDING PROVIDER IN FULL, YOU WILL NOT OWE THE CIVIL LITIGATION FUNDING PROVIDER ANYTHING IN EXCESS OF YOUR RECOVERY.”;**  
and

(5) Located immediately above the place on the contract where the consumer’s signature is required, “Do not sign this contract before you read it completely or if it contains any blank spaces. You are entitled to a completely filled-in copy of the contract. Before you sign this contract, you should obtain the advice of an attorney. Depending on the circumstances, you may want to consult a tax, public or private benefit planning, or financial professional. You acknowledge that your attorney in the legal claim has provided no tax, public or private benefit planning, or financial advice regarding this transaction.”

47-33-106.

(a)

(1) Any violation of this chapter, including a violation of any of the required contractual provisions of this chapter, shall be an unfair, false, misleading, and deceptive act or practice in the conduct of trade or commerce in violation of § 47-18-104.

(2) In addition to any rights conferred by subdivision(a)(1), a willful violation of this chapter shall be punishable by a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) per violation.

(3) Nothing in this chapter shall be construed to restrict the exercise of powers or the performance of the duties of the attorney general, which he or she is authorized to exercise or perform by law.

47-33-107.

(a) The contingent right to receive an amount of the potential proceeds of a legal claim is assignable by a consumer and that assignment is valid only for the purposes of obtaining funding from a civil litigation funding provider.

(b) Nothing contained in this chapter shall be construed to cause any nonrecourse civil litigation funding transaction conforming to this chapter to be deemed a loan or to be subject to any of the provisions governing loans contained in this code.

(c) Any attorney's lien, medicare lien, TennCare lien, or valid health care provider lien against the consumer's legal claim shall take priority over any lien of the civil litigation funding provider.

47-33-108. A civil litigation funding provider is limited to charges not to exceed twenty-five percent (25%) per annum of all proceeds provided to a Tennessee consumer pursuant to this chapter. This limitation of recovery being inclusive of all underwriting and organization fees growth factors and other charges or fees.

SECTION 2. This act shall take effect July 1, 2011, the public welfare requiring it.